Supreme Court, U.S.
FILED
05-239 AUG 17 2005
OFFICE

No. ___

IN THE

Supreme Court of the United States

HEALTHPATH OF MERCER COUNTY, INC.,
Petitioner,

v.

AETNA, INC., AETNA—U.S. HEALTHCARE, INC.,
AETNA HEALTH PLANS OF NEW JERSEY, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

MARC C. SINGER *
GEOFFREY GAULKIN
ANTHONY DEL GUERCIO
BRYAN P. SCHROEDER
SAIBER SCHLESINGER SATZ
& GOLDSTEIN, L.L.C.
One Gateway Center
13th Floor
Newark, New Jersey 07102
(973) 622-3333

* Counsel of Record

August 17, 2005

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

May the holdings in *Devlin v. Scardellitti*, 536 U.S. 1 (2002) and *Reynolds v. Butts*, 312 F.3d 1247 (CA11 2002), which find unnamed class members who have failed to object or intervene in a class action lack standing to appeal the merits of a class action's final settlement judgment or decree, be expansively interpreted to additionally deny class members standing to appeal a collateral lower federal court ruling denying an unnamed class member's motion for an enlargement of time to opt out of a class action settlement under Federal Rule of Civil Procedure 60(b), notwithstanding the unrelatedness of that order to the fairness or approval of the class action settlement judgment or decree.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner HealthPath of Mercer County, Inc. (hereinafter "HIPA") was an appellant below.

Aetna, Inc., Aetna Health Plans of New Jersey, Inc., and Aetna-U.S. Healthcare Inc., were appellees below.

CORPORATE DISCLOSURE STATEMENT

Petitioner HIPA is not controlled by a parent corporation. No publicly held company owns 10% of petitioner HIPA.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING BELOW	ii
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW AND JURISDICTION	1
RELEVANT STATUTORY PROVISION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	8
I. THE ELEVENTH CIRCUIT'S OVERLY EXPANSIVE CONSTRUCTION OF THE *DEVLIN* AND *REYNOLDS* CASES ESSENTIALLY ELIMINATES ALL RIGHTS TO APPEAL ORDERS DENYING MOTIONS MADE FOR RELIEF UNDER RULE 60(B)	9
II. THE ELEVENTH CIRCUIT'S DECISION REJECTS THE UNEQUIVOCAL AND CIRCUMSCRIBED HOLDING OF THIS COURT	13
CONCLUSION	15

TABLE OF AUTHORITIES

FEDERAL CASES — Page

American Bankers Insurance Co. of Florida v. Northwestern National Insurance Co., 198 F.3d 1332 (CA11 1999) 11
Blossom v. Milwaukee & Chicago R. Co., 1 Wall. 655 (1864) 13
Browder v. Director, Department of Correctional, 434 U.S. 257 (1978) 11
Devlin v. Scardelletti, 536 U.S. 1 (2002) ..... *passim*
Fiore v. Washington Community Mental Health Ctr., 906 F.2d 229 (CA1 1992) 11
Gonzalez v. Sec'y for Department of Correctional, 366 F.3d 1253 (CA11 2004) 11
Grilli v. Metropolitan Life Insurance Company, Inc., 78 F.3d 1533 (CA11 1996) 12
Gulf Coast Fans, Inc. v. Midwest Electric Importations, 740 F.2d 1499 (CA11 1984) 11
Hinckley v. Gilman, C. & S.R. Co., 94 U.S. 467 (1877) 13
In re Copely Pharm., Inc., 132 F.3d 42 (CA10 1997) 12
In re Diet Drugs Prod. Liab. Litig., 92 Fed.Appx. 890 (CA3 2004) 12
In re International House of Pancakes Franchise Litigation, 536 F.2d 261 (CA8 1976) 12
In re Painewebber Ltd. P'ships Litigation, 147 F.3d 132 (CA1 1998) 12
In re Vitamins Antitrust Class Actions, 327 F.3d 1207 (CADC 2003) 12
Pioneer Investment Services Co. v. Brunswick Associates Ltd., 507 U.S. 380 (1993) 6
Reynolds v. Butts, 312 F.3d 1247 (CA11 2002) 3, 8, 9, 10
Silber v. Mabon, 18 F.3d 1449 (CA9 1994) 12

TABLE OF AUTHORITIES—Continued

	Page
Stone v. I.N.S., 514 U.S. 386 (1995)	11
United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U. S. 72 (1988)	14
Williams v. Burlington Northern, Inc., 832 F.2d 100 (CA7 1987)	12
Wilson v. Thompson, 638 F.2d 801 (CA5 1981)	11, 12
FEDERAL STATUTES	
28 U.S.C. 1254(1)	1
28 U.S.C. 1291	*passim*
Fed.R. Civ.P. 23(b)(3)	11
Fed.R.Civ.P. 60(b)	*passim*
MISCELLANEOUS	
12 *Moore's Federal Practice*, 60.68	11, 12

IN THE

Supreme Court of the United States

No. __

HEALTHPATH OF MERCER COUNTY, INC.,
Petitioner,

v.

AETNA, INC., AETNA—U.S. HEALTHCARE, INC.,
AETNA HEALTH PLANS OF NEW JERSEY, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner HealthPath of Mercer County, Inc. (HIPA) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW AND JURISDICTION

The opinions of the Eleventh Circuit (Pet. App. 1a) and District Court (*id.* 7a-10a) are unpublished. The Court of Appeals issued its opinion on May 19, 2005. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT STATUTORY PROVISION

28 U.S.C. § 1291 provides in relevant part: "The courts of appeals * * * shall have jurisdiction of appeals from all final decisions of the district courts of the United States * * * *."

STATEMENT OF CASE

This is one of the most critical jurisdictional issues to reach this Court in the class action context. At issue is the fundamental right of an unnamed class member to appeal a collateral order by the district court denying the class member relief under FED.R.CIV.P. 60(b) based on fraud, misrepresentation and other inequitable conduct by a class defendant. Resolving this jurisdictional dispute will largely determine the rights and obligations of unnamed class members and their standing to appeal final judgments and decrees particular to them, and which are collateral to any judgments or decrees affecting the class action or its members as a whole.

The petition arises from a complex procedural history involving the simultaneous litigation of a state arbitration proceeding and a federal class action lawsuit. Respondents are defendants in both an arbitration proceeding in New Jersey (the "NJ Arbitration") and the instant class action lawsuit before the United States District Court for the Southern District of Florida ("Class Action").

From June 2000 through December 2003, petitioner and respondents actively engaged in the contractually mandated NJ Arbitration, which included extensive written and oral discovery and motion practice. During this time, in May 2003, respondents entered into a settlement of the Class Action. Respondents nevertheless continued to arbitrate in the NJ Arbitration for several months thereafter, never suggesting that the Class Action settlement comprehended petitioner's claims. Indeed, when confronted with certain discovery requests in the NJ Arbitration, respondents argued that the

claims in the Class Action were "different", "unrelated" and "had nothing to do with" the NJ Arbitration. However, after months of those repeated representations, and after the time for petitioner to opt out of the Class Action settlement expired on August 29, 2003, respondents changed their position in December 2003, when they sought to dismiss the NJ Arbitration based on their assertion that the claims were related to the claims under the Class Action settlement and that petitioner was bound by that settlement.

Very quickly, in January 2004, petitioner moved in the United States District Court for the Southern District of Florida to enlarge the time to opt out of the Class Action settlement and/or relief from judgment pursuant to FED.R.CIV.P. 60(b). That motion was denied in November 2004. Petitioner then timely appealed the denial of the Rule 60(b) motion, but the Eleventh Circuit dismissed petitioner's appeal, finding that an unnamed, nonintervening class member lacks standing to challenge the district court's denial of a FED.R.CIV.P. 60(b) motion to enlarge the time to opt out of a class settlement. (Pet. App. 1a). The Eleventh Circuit did not consider the substantive merits of petitioner's appeal or the unrelatedness of the order being appealed to the Class Action settlement order.

Petitioner respectfully submits that it has standing to appeal the denial of its Rule 60(b) motion. Prior precedent, including *Devlin v. Scardelletti*, 536 U.S. 1 (2002) and *Reynolds v. Butts*, 312 F.3d 1247 (CA11 2002), do not provide a basis for the Eleventh Circuit to dismiss petitioner's appeal for lack of jurisdiction. *Devlin* and its progeny only apply in cases where unnamed parties are challenging the fairness or approval of the underlying class action settlement.

Here, petitioner did not attack, challenge or otherwise seek judicial review of the district court's approval of the Class Action settlement or its determination that the settlement was fair. Rather, petitioner appealed from the findings and rulings

of the collateral order of the district court that denied petitioner's motion for an enlargement of time to opt out of the settlement based on repeated representations and conduct by respondents that occurred in the separate arbitration action. In its Rule 60(b) motion to the district court, petitioner sought to be excluded from the Class Action settlement, not to challenge its approval or fairness.

Petitioner's appeal was strictly limited to a review of the propriety of the district court's order denying petitioner's FED.R.CIV.P. 60(b) motion. The appeal of that order was limited in scope to the denial of the Rule 60(b) motion. The motion and the ensuing appeal impacted petitioner alone because they determined its rights to opt out and to continue prosecuting its claims through the NJ Arbitration. Petitioner accordingly has a statutory right to appeal the district court's order pursuant to 28 U.S.C. 1291.

This Court's precedent firmly establishes that an appeal from a denial of a Rule 60(b) motion is narrow in scope and addresses only the propriety of the denial under Rule 60(b). It does not raise issues from the underlying judgment [i.e., the Class Action settlement] for review. Granting the petition for a writ of certiorari, hearing petitioner's appeal and granting the relief sought will have no appreciable impact on any of the class members or the terms of the settlement. All it will do is permit petitioner to continue with the arbitration it initiated against respondents and litigated for three and one-half years before, during and after the Class Action settlement was entered.

In every reported case petitioner found addressing an unnamed class member's appeal from a district court's denial of a motion to opt out of a class action settlement, made pursuant to Rule 60(b) (including appeals decided after *Devlin*), the court retained jurisdiction over that appeal. Accordingly, consistent with due process, fundamental fairness and for the

other reasons set forth more specifically below, petitioner urges this Court to grant the petition for writ of certiorari.

Petitioner HIPA is an independent practice association comprised of physicians in New Jersey and is a corporation organized under the laws of the State of New Jersey. On or about October 1, 1990, petitioner entered into service agreement with respondent Aetna Health Plans of New Jersey, Inc., an Aetna subsidiary (respondents), wherein petitioner agreed to provide medical services to individuals enrolled in respondents' health maintenance organization (HMO) health plans at reduced rates. Up until December 1997, petitioner had approximately three hundred (300) physician-members who were obligated to treat individuals enrolled in respondents' HMO plans in the Mercer County region of New Jersey. Shortly after respondents terminated that relationship in or about December 1997, petitioner ceased functioning as an active independent practice association in New Jersey.

On or about June 22, 2000, petitioner instituted the NJ Arbitration proceeding pursuant to an arbitration clause in its service agreement with respondents, wherein petitioner sought damages against respondents as a result of various breaches of that service agreement. Up until December 12, 2003, both petitioner and respondents were actively engaged in prosecuting and defending the claims and issues raised in the NJ Arbitration and petitioner incurred hundreds of thousands of dollars in fees and costs associated with the arbitration of those claims and issues.

Unbeknownst to petitioner, but certainly known to respondents, in or about April 2000—approximately two months before petitioner instituted the NJ Arbitration—a multi-district Class Action was filed in the United States District Court for the Southern District of Florida. The Class Action was instituted by health care providers across the nation against various healthcare insurance policies, including respondents,

wherein the class plaintiffs alleged a host of causes of action, including causes similar to those petitioner raised in the NJ Arbitration. Respondents actively arbitrated the claims in the NJ Arbitration while concurrently litigating the claims in the Class Action.

Even after respondents signed the Class Action settlement agreement on May 21, 2003, they continued to litigate the claims in the NJ Arbitration, still without the slightest suggestion that the claims in arbitration were comprehended by the Class Action settlement. Indeed, on repeated occasions after the Class Action settlement agreement was signed, respondents affirmatively represented to petitioner and the arbitrator that the claims and issues in the Class Action litigation were "different," "unrelated" and had "nothing to do with" those in the NJ Arbitration. (Pet. App. 29a). In addition, respondents continued to act as if they fully intended to continue arbitrating in New Jersey by seeking discovery they claimed was necessary for their defense of the arbitration claims.

On December 12, 2003, after three and one-half years of actively arbitrating petitioner's claims in the NJ Arbitration, seven months after respondents signed the Class Action settlement agreement and three months after the opt-out deadline expired, respondents suddenly changed their position, moving before the arbitrator to dismiss petitioner's arbitration claims as barred by the Class Action settlement.

Petitioner promptly filed a motion in the Class Action seeking an enlargement of time to opt out of the Class Action settlement with respondents and/or for relief from judgment. Petitioner's motion was based, in part, on the following: (1) petitioner's failure to opt out of the Class Action settlement constitutes excusable neglect under FED.R.CIV.P. 60(b)(1) and *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380 (1993); (2) respondents' assertion that the settlement agreement was grounds for dismissal of peti-